

Ms. FOXX. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

□ 2115

FEDERAL ADVISORY COMMITTEE ACT AMENDMENTS OF 2008

Mr. CLAY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5687) to amend the Federal Advisory Committee Act to increase the transparency and accountability of Federal advisory committees, and for other purposes, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5687

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Federal Advisory Committee Act Amendments of 2008".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Ensuring independent advice and expertise.
- Sec. 3. Preventing efforts to circumvent the Federal Advisory Committee Act and public disclosure.
- Sec. 4. Increasing transparency of advisory committees.
- Sec. 5. Comptroller General review and reports.
- Sec. 6. Definitions.
- Sec. 7. Effective date.

SEC. 2. ENSURING INDEPENDENT ADVICE AND EXPERTISE.

(a) BAR ON POLITICAL LITMUS TESTS.—Section 9 of the Federal Advisory Committee Act (5 U.S.C. App.) is amended—

(1) in the section heading by inserting "MEMBERSHIP;" after "ADVISORY COMMITTEES;"

(2) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively; and

(3) by inserting after subsection (a) the following:

"(b) APPOINTMENTS MADE WITHOUT REGARD TO POLITICAL AFFILIATION OR ACTIVITY.—All appointments to advisory committees shall be made without regard to political affiliation or political activity, unless required by Federal statute."

(b) CONFLICTS OF INTEREST DISCLOSURE.—Section 9 of the Federal Advisory Committee Act (5 U.S.C. App.) is further amended by inserting after subsection (b) (as added by subsection (a)) the following:

"(c) CONFLICTS OF INTEREST DISCLOSURE.—"(1)(A) The head of each agency shall ensure that no individual appointed to serve on an advisory committee that reports to the agency has a conflict of interest that is relevant to the functions to be performed by the advisory committee, unless the head of the agency determines that the need for the individual's services outweighs the potential impacts of the conflict of interest.

"(B) If the head of the agency makes such a determination with respect to an individual, nothing in this subsection is intended

to preclude the head of the agency from requiring the recusal of the individual from particular aspects of the committee's work.

"(C) In the case of an individual appointed as a representative, the fact that an individual is associated with the entity whose views are being represented by the individual shall not itself be considered a conflict of interest by the agency.

"(2) The head of each agency shall require—

"(A) that each individual the agency appoints or intends to appoint to serve on an advisory committee as a representative inform the agency official responsible for appointing the individual in writing of any actual or potential conflict of interest—

"(i) that exists before appointment or that arises while the individual is serving on the Committee; and

"(ii) that is relevant to the functions to be performed; and

"(B) that, for an individual appointed to serve on an advisory committee, the conflict is publicly disclosed as described in section 11.

"(3) Nothing in this subsection is intended to alter any requirement or obligation for a special Government employee under the Ethics in Government Act (5 U.S.C. App.) or other applicable ethics law, including any requirement to file a financial disclosure report. The head of each agency shall require that each individual the agency appoints as a special Government employee inform the agency in writing of any conflict that exists before appointment or that arises while the individual is serving on the committee to the extent any financial disclosure required by the Ethics in Government Act (5 U.S.C. app.) or other applicable law would not uncover the conflict of interest as such term is defined in regulations promulgated by the Office of Government Ethics to carry out this subsection.

"(4) The head of each agency shall ensure that each report of an advisory committee that reports to the agency is the result of the advisory committee's judgment, independent from the agency. Each advisory committee shall include in each report of the committee a statement describing the process used by the advisory committee in formulating the recommendations or conclusions contained in the report."

(c) REGULATIONS.—

(1) REGULATIONS RELATING TO CONFLICTS OF INTEREST.—Not later than 180 days after the date of the enactment of this Act, the Director of the Office of Government Ethics, in consultation with the Administrator of General Services, shall promulgate—

(A) regulations defining the term "conflict of interest";

(B) regulations identifying the method by which individuals must disclose conflicts and the period of time for which a representative or special Government employee, or a candidate for appointment as a representative or special Government employee, shall look back in time to determine whether an interest is considered a conflict for the purpose of the notification requirement in subsection (c) of section 9 of the Federal Advisory Committee Act, as added by this section; and

(C) such other regulations as the Director finds necessary to carry out and ensure the enforcement of such subsection (c).

(2) REGULATIONS IMPLEMENTING FACA.—Section 7(c) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by inserting after "(c)" the following: "The Administrator shall promulgate regulations as necessary to implement this Act."

SEC. 3. PREVENTING EFFORTS TO CIRCUMVENT THE FEDERAL ADVISORY COMMITTEE ACT AND PUBLIC DISCLOSURE.

(a) DE FACTO MEMBERS.—Section 4 of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by adding at the end the following:

"(d) TREATMENT OF INDIVIDUAL AS MEMBER.—An individual who is not a full-time or permanent part-time officer or employee of the Federal Government shall be regarded as a member of a committee if the individual regularly attends and participates in committee meetings as if the individual were a member, even if the individual does not have the right to vote or veto the advice or recommendations of the advisory committee."

(b) INTERAGENCY ADVISORY COMMITTEES.—Section 11 of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by adding at the end the following:

"(f) INTERAGENCY ADVISORY COMMITTEES.—(1) Any communication between—

"(A) an interagency advisory committee established by the President or the Vice President or any member or staff acting on behalf of such an interagency advisory committee, and

"(B) any person who is not an officer or employee of the Federal Government, shall be made available for public inspection and copying. Any portion of a communication that involves a matter described in section 552(b) of title 5, United States Code, or that is subject to a valid constitutionally based privilege against such disclosure, may be withheld from public disclosure.

"(2) In this subsection, the term 'interagency advisory committee' means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, established in the interest of obtaining advice or recommendations for the President or the Vice President, that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government and includes officers or employees of at least two separate Federal agencies but does not include an advisory committee as defined in section 3(2) of this Act.

"(3) This subsection is not intended to apply to cabinet meetings, the National Security Council, the Council of Economic Advisors, or any other permanent advisory body established by statute."

(c) SUBCOMMITTEES.—Section 4 of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by striking subsection (a) and inserting the following:

"(a) APPLICATION.—The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee, including any subcommittee or subgroup thereof, except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise. Any subcommittee or subgroup that reports to a parent committee established under section 9(a) is not required to comply with section 9(e). In this subsection, the term 'subgroup' includes any working group, task force, or other entity formed for the purpose of assisting the committee or any subcommittee of the committee in its work."

(d) COMMITTEES CREATED UNDER CONTRACT.—Section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended in the matter following subparagraph (C) by adding at the end the following: "An advisory committee is considered to be established by an agency, agencies, or the President, if it is formed, created, or organized under contract, other transactional authority, cooperative agreement, grant, or otherwise at the request or direction of, an agency, agencies, or the President."